

# Mediation Country Report

## Poland

by  
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### 1) Definitions

*What are the definitions for mediation and conciliation in the legal framework of your jurisdiction?*

The law does not provide any definition of mediation. Mediation is commonly understood as the process during which parties to a dispute conduct negotiations in order to resolve the dispute amicably with the assistance of a neutral third party – the mediator.

Conciliation is the positive resolution of the existing dispute.

### 2) Legal Framework

*- What are the Statutes, procedural rules and case law that demonstrate how intertwined mediation is with the legal system in your jurisdiction?*

*- What are the protections provided to confidentiality of mediation proceedings under the law?*

*- Are the commercial contracts and mediation settlement agreements enforceable in your jurisdiction?*

*- Are the parties bound by terms of contracts that require mediation and is a settlement agreement they may reach enforceable?*

The Civil Procedure Code of 17 November 1964 provides that in civil and commercial cases, where a settlement can be reached, the settlement may be agreed upon in the course of mediation proceedings. Mediation may be conducted either before or after the commencement of the court proceedings.

The Civil Procedure Code regulates such issues as commencement, duration and confidentiality of the mediation proceedings. It also specifies who may run mediation in civil cases and how the settlement agreement reached as a result of mediation proceedings can be authorized and enforced under Polish law. The Civil Procedure Code does not set any rules of mediation as such and leaves it to the mediator and the parties.

Natural persons, who enjoy the legal capacity and civil rights in full, may become mediators. Active judges cannot act as mediators. Social and professional organizations may create lists of regular mediators and set up mediation bodies. Such lists should be delivered to the President of the competent Regional Court. Regular mediators may refuse to conduct mediation proceedings due to important reasons only.

According to the Civil Procedure Code mediation proceedings are confidential. The mediator has a legal duty to keep all facts disclosed to him during the mediation proceedings confidential, unless the parties to the mediation release him from such obligation. As a consequence, the mediator cannot act as witness in court proceedings in relation to facts presented to him during the mediation proceedings, unless the parties release him from that obligation. Using the settlement proposals as well as any other statements made during the mediation by the party to the court or arbitration proceedings is prohibited and shall have no effect on the outcome of the proceedings.

The authorized settlement agreement concluded before the mediator has the same legal effect as the settlement agreement concluded before the court. The authorization is made by

the competent court at the request of the party to the mediation. If the settlement agreement can be enforced, the court authorizes it by appending it with the enforcement clause. Therefore, the authorized settlement agreement may be the basis for initiation of the official enforcement proceedings.

According to Art. 202<sup>1</sup> of the Civil Procedure Code, if the parties to the dispute have entered into the agreement pursuant to which the dispute is to be resolved by mediation, the court is obliged to refer the parties to mediation if the defendant applies for it before it enters into the dispute on the merits of the case.

### **3) Mediation Schemes and Providers**

- *What is the basis and the procedure for court-annexed schemes?*
- *Who are the major mediation providers in your jurisdiction?*

Under Polish law, the court may refer the parties to mediation before the first hearing at the trial is completed. After that the court may do so only upon the joint application of the parties. There are exceptions to this rule regarding simplified, ordering and rebuke proceedings, which are aimed at quick resolution of the dispute by the court itself. The court may refer the parties to mediation only once during the dispute. Mediation proceedings cannot be initiated if one of the parties opposes to the mediation within one week from the announcement or delivery of the court's order.

In Poland there is a number of entities providing mediation services in business cases (in 2008 there were 72 mediation providers and 2676 mediators registered), either in general or in specific matters. That number includes the following mediation providers: Polskie Centrum Mediacji, Centrum Mediacji Fundacji „Partners” Polska, Centrum Mediacji Gospodarczej Polskiego Stowarzyszenia Sądownictwa Polubownego, Centrum Mediacji przy Polskiej Konfederacji Pracodawców Prywatnych Lewiatan.

Official lists of mediators and mediation bodies are kept by the Presidents of Regional Courts.

### **4) Regulation of Mediators**

- *What training courses and accreditations are required for to be an accredited mediator in your jurisdiction?*
- *How many training hours are required for accreditation?*

The provisions on dispute resolution in Poland do not require the mediator to complete any form of special training.

The mediation providers organize trainings for their mediators in accordance with their own standards.

### **5) Uptake and Future Developments**

- *What is the success rate of mediation? Please reference statistics, where available.*
- *Is there any potential future legislation, plans or court-annexed schemes? If so, please discuss in detail.*

N/A.

#### **6) Costs**

*What are the costs of mediation? Please assume that the duration of the procedure is one day for a dispute valued at 100.000 €.*

The law sets the remuneration of mediators involved in court-directed mediation to be: PLN 1,000 PLN, i.e. about € 250-300 plus costs incurred by the mediator in relation to the particular mediation (transport, lease of premises, office materials and notifications).

In case of mediations run by the parties based on the mediation agreement, the costs of mediation and remuneration of the mediator shall be subject to a separate agreement between the parties and the mediator (or mediation provider).

#### **7) Mediation Advocacy Training**

*Training schemes and providers are outlined, including the distinction between mandatory and optional training, length of the training and percentages of lawyers who have completed the courses.*

There are no mandatory trainings for lawyers involved in mediation.

Training on basic rules of mediation and provision of services related thereto is usually an optional scheme for students at law schools. It is also provided to bar trainees during their bar education.

Members of the bars of advocates and legal advisors may participate in optional trainings organized by their chambers, the duration and the scope of which is each time determined by their organizers.